IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10103 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGRAJSING KHUMANSINH RAOWL

Versus

STATE OF GUJARAT

Appearance:

MR A.S. DAVE, for Petitioner

MR PK SHUKLA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

1. Petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Rajkot City on 11th of August, 2000 in exercise of powers conferred upon him

under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The detenu - petitioner came to be detained from 11th of August, 2000, in pursuance of the said order.

2, The detaining authority came to consider 5 crimes registered against the petitioner under Sec. 379 of the Indian Penal Code. The detaining authority placed reliance on the complaint filed in the above said crimes registered and the investigation carried on. The detaining authority also placed reliance on the statements of the witnesses who on assurance of anonymity offered their statements to the extent that the petitioner was dealing in committing the offence of theft and was headstrong person and hardened criminal. From the above materials, the detaining authority came to the conclusion that the petitioner was a " dangerous person " within the meaning of Section 2(c) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Mr. A.S. Dave, appointed for the petitioner and learned AGP Mr. P.K. Shukla for the respondents were heard.

4. Amongst other grounds it was vehemently urged to challenge the detention order that the order in question is vitiated by non-application of mind on the part of detaining authority. It was urged that the detaining authority did not consider that the petitioner was in jail at the time of passing of the order. It was further urged that the detaining authority failed to consider the aspect of the cancellation of bail that was available to the detaining authority, which was in turn less drastic remedy to prevent the illegal activities of the petitioner.

5. The fact reveals that the first crime came to be registered against the petitioner on 20th June, 2000 and last crime came to be registered against the petitioner on 9th of August, 2000. The detaining authority in the grounds itself has made a statement that in all the offences registered against the petitioner, he was under judicial custody. After that, the detaining authority also observed that in the above said crimes the petitioner was likely to be released on bail and likely to be indulged in the illegal activities while released on bail. The total non-application of mind on the part of the detaining authority qua the relevant aspects of the case is obvious. The object of the preventive measure under the PASA is to remove the persons from

society and to place him behind the bar so as to prevent his illegal activities. This detention, by statutory provision, is limited for 12 months. In the present case, as per the statements made by the detaining authority in the grounds itself, the detenu was in judicial custody right from 20th June, 2000 till 11th of August, 2000, the date on which the order of detention came to be passed. That necessarily establishes that the petitioner was not capable of continuing his illegal activities from 20th June, 2000 because he was in judicial custody. The detaining authority, however, overlooked this very important aspect of the present case. Therefore, firstly, the non-application of mind qua relevant aspect of the case on the part of the detaining authority clearly emerges from this fact. Secondly, the detaining authority unnecessarily anticipated that the petitioner was likely to be released on bail and during bail he was likely to be indulged in illegal activities. However, the detaining authority failed to concider that the concerned authorities were empowered to cancel the bail of the petitioner on the grounds which are mentioned in the order of detention. Thus, the remedy u/s 437(5) of the Cr.P.C. for cancellation of bail was available to the detaining authority if at all the petitioner would have been released on bail and if the detenu would have continued his illegal activities. However, non-application of mind on the part of the detaining authority is also obvious qua this aspect of the case. Therefore, the order of detention for the above said reasons is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Rajkot City on 11th August, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Yograjsinh Khumansinh Raowl is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair